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                       UNITED STATES DISTRICT COURT
                            DISTRICT OF NEVADA
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   BRYAN WAGNER,
                                            3:11-cv-00537-ECR-RAM
8
        Plaintiff,
9
                                            Order
10
   WASHOE COUNTY HEALTH DISTRICT,
  WASHOE COUNTY, MARY ANDERSON,
   ROBERT SACK, and DAVE McNINCH,
12
        Defendants.
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15
        On July 26, 2011, Plaintiff Bryan Wagner filed a complaint
16 alleging age discrimination and retaliation against Defendants.
                                                                     On
17 August 31, 2011, Defendants Washoe County Health District, Mary
18 Anderson, Robert Sack, and Dave McNinch filed a Motion to Dismiss
19
  (#7). On November 21, 2011, Defendant Washoe County joined (#14) in
20 the Motion to Dismiss (#7). On September 29, 2011, after a
21 stipulated extension of time to respond, Plaintiff filed his
22 opposition (#11) to the Motion (#7). On October 7, 2011, Defendants
23 filed a reply (#12).
24
        Plaintiff's complaint alleges age discrimination and
25 retaliation in violation of the Age Discrimination in Employment Act
26 of 1967 ("ADEA"). Plaintiff alleges that he was hired by Washoe
27 County Health District in 1994, and was harassed and discriminated
28 against due to his age in 2009. The ADEA's provisions are limited
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to individuals over the age of forty (40). 29 U.S.C. § 631(a).

Plaintiff failed to allege that he is over forty, and his opposition (#11) does not address this oversight. As such, Plaintiff's complaint (#1) fails to sufficiently allege age discrimination under the ADEA. Plaintiff will be granted leave to amend, and should provide more specific factual allegations relating to his discrimination and retaliation claims.
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Defendants also contest the inclusion of Washoe County Health
District as a defendant in this action. Under Nevada law, an action
may be brought against "the State of Nevada or any political
subdivision of the state." Nev. Rev. Stat. § 41.031(2). In Wayment v.
Holmes, the Nevada Supreme Court found that the Washoe County
District Attorney's Office "is not a suable entity because it is a
department of Washoe County, not a political subdivision." 912 P.2d
816, 819 (Nev. 1996). "The State of Nevada has not waived immunity
on behalf of its departments of political subdivisions." Id. As
such, the Washoe County Health District must be dismissed from this
action.

Finally, Defendants argue that the individual defendants in this case must be dismissed, as there is no individual liability under the ADEA. Miller v. Maxwell's Intern. Inc., 991 F.2d 583, 587-88 (9th Cir. 1993). Plaintiff "concedes Miller is the precedent in the 9th Circuit" although Plaintiff urges this Court to hold that Miller is incorrect. Miller is binding precedent on this Court, and furthermore, other courts, both at the district court level and at the circuit level, have cited Miller with approval. See, e.g., Fantini v. Salem State College, 557 F.3d 22, 30 (1st Cir. 2009)

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("[a]fter reviewing the analysis fashioned by all of our sister  $2 \parallel \text{circuits}$ , we . . . determine as they have that there is no 3 | individual employee liability under Title VII"); Lam v. San 4 Francisco, No. C 08-4702 PJH, 2010 WL 235081, at \*9 (N.D. Cal. Jan. 5 21, 2010) ("the Ninth Circuit has made clear that 'Title VII . . . 6 limit[s] civil liability to the employer.") (citation omitted). As such, the individual defendants in this case must be dismissed. 8 9 IT IS, THEREFORE, HEREBY ORDERED that Defendants' Motion to 10 Dismiss (#7) is **GRANTED.** Defendants Washoe County Health District, 11 Mary Anderson, Robert Sack, and Dave McNinch are not proper 12 defendants to this case and are dismissed from the action. 13 Furthermore, Plaintiff's claims against Washoe County must be 14 dismissed for failure to state a claim upon which relief may be 15 granted. 16 IT IS FURTHER ORDERED that Plaintiff shall have twenty-eight (28) days within which to file an amended complaint addressing the deficiencies noted in our Order. 19 20 DATED: March 30 , 2012. 21 22 23 24 25 26

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